

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**MISC. CIVIL APPLICATION No. 22 OF 2020**  
**(Arising from the Dismissal Order of this High Court in Civil Appeal No. 23 of 2019)**

**JOSEPH JEROME MUNA.....APPLICANT**

**VERSUS**

**1. MAKELE GACHUMA@MAKELE..... } RESPONDENT**  
**2. NBCL DISTRIBUTION LTD..... }**

**RULING**

*28<sup>th</sup> April & 21<sup>st</sup> May, 2021*

**MKWIZU J.**

By a chamber summons supported by an affidavit, applicant **JOSEPH JEROME MUNA** filed an application for setting aside a dismissal order of this court dated 4<sup>th</sup> August, 2020. The application was brought under **Order XXXIX Rule 19 of the Civil Procedure (Cap 33 R.E 2002)** supported by an affidavit sworn by Dutu Faustine Chebwa, applicant's advocate on 31 August, 2020.

The application was not opposed. In his counter affidavit plus the oral submissions made before the court, Mr. Andrew Luhigo, respondent's

counsel did support the application. He requested the court to grant the prayer with no order as to costs.

I have considered the application. In an application of this nature, the court is only required to consider whether applicant has furnished sufficient reasons for his absence in court on the date when the appeal was dismissed.

This is the position under **Oder XXXIX Rule 19 of the Civil Procedure Code (Cap 33 R:E 2019)** which specifically states:

*"Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and, **where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.**"( Emphasis provided).*

See also the case of **Sandru Mangalji Vs Abdul Aziz Laiani and Others**, Misc. Commercial Application No. 106 of 2016 (unreported).

Again, in the case of **Nasibu Sungura vs Peter Machumu** [1998] TLR 497 at page 501 the Court observed that: -

*"an application to set aside the order dismissing the suit for non-appearance, the important question is not whether the case for the applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the applicant's non-appearance on the date the suit was dismissed."*



Paragraphs 4,5, 6, 7 and 8 of the affidavit in support of the application advance sickness as a sole reason as to why the applicant's advocate could not attend the court on 4<sup>th</sup> August, 2020 when his appeal was scheduled for hearing. The affidavit states that, after having fallen sick, applicant's advocate informed Mr. Luhigo, respondent's counsel and requested him to hold his brief in court, unfortunately, on the way to court, respondent's advocate got a breakdown which made him delay in court hence the complained dismissal order.

I do not find any reason why this application should not be allowed. After all, it is on the interest of justice that all matters should proceed on merit so that parties can air out their grievances for a proper determination by the

court. See for instances the decision in the case of **Fredric Selenga and Another V. Agness Masele** (1983) TLR 99.

That said, I allow the application, the dismissal order by this court dated 4<sup>th</sup> August, 2020 is hereby set aside. Civil Appeal No 23 of 2019 is hereby re admitted for hearing as prayed. Order accordingly.

**DATED** at **SHINYANGA** this **21<sup>st</sup>** day of **May**, 2021

**E.Y. MKWIZU**  
**JUDGE**  
**21/5/2021**